

**BAKER & HOSTETLER LLP**

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*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC and  
the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES, LLC,

Defendant.

In re:

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Debtor.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

MARC I. HERTZ IRREVOCABLE TRUST DTD  
3/15/92; KENNETH D. WEISER, in his capacity  
as Trustee of the Marc I. Hertz Irrevocable Trust  
DTD 3/15/92; JOHN B. BEASLEY, in his capacity

Adv. Pro. No. 10-04879 (SMB)

as Trustee of the Marc I. Hertz Irrevocable Trust  
DTD 3/15/92; and MARC I. HERTZ

Defendants.

**TRUSTEE'S REQUEST TO ENTER DEFAULT**

To: CLERK OF THE COURT  
UNITED STATES BANKRUPTCY COURT

Irving H. Picard (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities, LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.*, and Bernard L. Madoff, by and through his counsel, Baker & Hostetler LLP, respectfully requests that the Clerk of the Court issue a Certificate of Default against defendants Marc I. Hertz Irrevocable Trust DTD 3/15/92, Kenneth D. Weiser and Marc I. Hertz, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, made applicable to this Adversary Proceeding by Rule 7055 of the Federal Rules of Bankruptcy Procedure, for failure to plead or otherwise defend the above-captioned action as it fully appears from the Court file and from the attached Affidavit.

**WHEREFORE**, the Trustee respectfully requests that this Court grant the Trustee's Motion in its entirety and provide for such other relief as this Court deems just and proper.

Dated: New York, New York  
June 26, 2015

Respectfully submitted,

Of Counsel:

**BAKER & HOSTETLER LLP**

811 Main Street, Suite 1100  
Houston, Texas 77002-0518  
Telephone: 713.751.1600  
Facsimile: 713.751.1717  
Dean D. Hunt  
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*/s/ Nicholas J. Cremona*

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CORPORATION,

Plaintiff-Applicant,

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BERNARD L. MADOFF INVESTMENT  
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Defendant.

Adv. Pro. No. 08-01789 (SMB)

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Plaintiff,

v.

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as Trustee of the Marc I. Hertz Irrevocable Trust  
DTD 3/15/92; JOHN B. BEASLEY, in his capacity

Adv. Pro. No. 10-04879 (SMB)

as Trustee of the Marc I. Hertz Irrevocable Trust  
DTD 3/15/92; and MARC I. HERTZ

Defendants.

**AFFIDAVIT SUPPORTING ENTRY OF DEFAULT**

STATE OF TEXAS                    )  
  ) ss:  
COUNTY OF HARRIS            )

Farrell Hochmuth, being duly sworn, hereby attests as follows:

1. I was admitted pro hac vice into this Court and am a partner at the firm of Baker & Hostetler LLP, which is counsel for Irving H. Picard (“Trustee”), Trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”) and the estate of Bernard L. Madoff, individually.

2. On December 2, 2010, the Trustee commenced this adversary proceeding by filing a complaint (the “Complaint”) against Marc I. Hertz Irrevocable Trust DTD 3/15/92; Kenneth D. Weiser, in his capacity as Trustee of the Marc I. Hertz Irrevocable Trust dtd 3/15/92; and Marc I. Hertz (the “Defaulting Defendants”). (Dkt. No. 1.) The Complaint asserted claims pursuant to sections 78fff(b), 78FFF-1(a) and 78fff-2(c)(3) of SIPA, sections 105(a), 544, 548(a), 550(a), and 551 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, and other applicable law, seeking the avoidance and recovery of fraudulent transfers in connection with certain transfers of property by BLMIS to or for the benefit of the Defaulting Defendants. (*Id.*).

3. On March 23, 2011, the Clerk of this Court issued a summons upon the Defaulting Defendants. (Dkt. No. 3).

4. On March 23, 2011 the Trustee, in accordance with Bankruptcy Rule 7004(b) of the Federal Rules of Bankruptcy Procedure, timely served the Summons and Complaint upon the Defaulting Defendants. (*See* Dkt. Nos. 3 and 4). An Affidavit of Service evidencing proper and timely service was filed with the Court. (*See* Ex. A., Affidavit of Service; Dkt. No. 4).

5. Pursuant to the Order (1) Establishing Litigation Case Management Procedures For Avoidance Actions And (2) Amending The February 16, 2010 Protective Order governing the litigation of certain avoidance actions, including this adversary proceeding, the time by which the Defaulting Defendants may answer or otherwise move with respect to the Complaint expired on May 23, 2011. (*See* Dkt. No. 3).

6. Despite being duly served with the Summons and Complaint, the Defaulting Defendants did not file an answer, move, or otherwise respond to the Complaint on or before May 23, 2011.

7. Upon information and belief, Defaulting Defendants Kenneth D. Weiser, in his capacity as Trustee of the Marc I. Hertz Irrevocable Trust dtd 3/15/92, and Marc I. Hertz are neither infants nor incompetents.

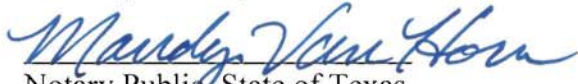
8. On June 23, 2015, I performed a search on the Department of Defense Manpower Data Center (DMDC). Upon searching the information data banks of DMDC, the DMDC does not possess any information indicating that Defaulting Defendants Kenneth D. Weiser and Marc I. Hertz are currently on active duty as to all branches of the Military.

9. I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief.



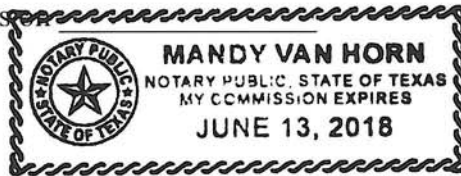
Farrell Hochmuth

Sworn to before me this  
26th day of June, 2015



Notary Public, State of Texas

My Commission Expires



UNITED STATES BANKRUPTCY COURT  
Southern District of New York

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Adv. Pro. No. 08-01789 (BRL)

Plaintiff-Applicant,

SIPA LIQUIDATION

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

(Substantively Consolidated)

Defendant.

In re:

BERNARD L. MADOFF,

Case No. 09-11893 (BRL)

Debtor.

IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,

Adv. Pro. No. 10-04879 (BRL)

Plaintiff,

v.

MARC I. HERTZ IRREVOCABLE TRUST DTD  
3/15/92; KENNETH D. WEISER, in his capacity as  
Trustee of the Marc I. Hertz Irrevocable Trust DTD  
3/15/92; JOHN B. BEASLEY, in his capacity as  
Trustee of the Marc I. Hertz Irrevocable Trust DTD  
3/15/92; and MARC I. HERTZ,

Defendants.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

I, Christopher Timony declare:

1. I am over the age of 18 years and not a party to these chapter 11 cases.
2. I am employed by Donlin, Recano & Company, Inc., 419 Park Avenue South, Suite 1206, New York, NY 10016.
3. On the 23rd day of March, 2011, I caused a true and accurate copy of the:
  - (i) "Complaint", along with the relevant exhibits (Docket No. 1); and the

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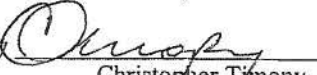





- (ii) "Notice of Applicability of the Order Approving Case Management Procedures for Avoidance Actions" (Docket No. 2); and the
- (iii) "Summons and Notice of Pretrial Conference in An Adversary Proceeding" (Docket No. 3); and the
- (iv) "Order (1) Establishing Litigation Case Management Procedures for Avoidance Actions and (2) Amending the February 16, 2010 Protective Order" dated November 11, 2010; and the
- (v) "Avoidance Action Executive Summary Letter dated December 20, 2010"; and the
- (vi) "Third Amended Notice of Omnibus Avoidance Action Hearing Dates",

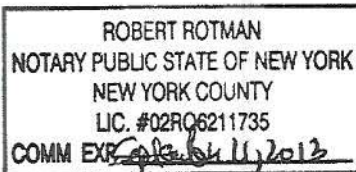
to be served upon the parties listed on Exhibit 1, attached hereto, via First Class US Mail.

- 4. Said documents were securely enclosed in postage prepaid envelopes and delivered to an office of the United States Postal Service for delivery by First Class Mail.
- 5. I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge. Executed this 23rd day of March, 2011 at New York, New York.

By   
Christopher Timony

Sworn before me this  
23rd day of March, 2011

  
Notary Public



Date : 3/23/2011

Adv Pro No: 10-04879 (BRL)  
Exhibit 1  
Redacted Version

Page # : 1

MARC I. HERTZ IRREVOCABLE TRUST DATED 3/15/92

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MARC I. HERTZ IRREVOCABLE TRUST DATED 3/15/92  
NEW YORK NEW YORK 10020

000579 003808

KENNETH D. WEISER

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KENNETH D. WEISER  
NEW YORK NY 10020

001557 003809

JOHN B. BEASLEY

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JOHN B. BEASLEY  
NEW YORK NY 10020

001558 005242

MARC I. HERTZ

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MARC I. HERTZ  
NEW YORK NY 10020

001559 005243